

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JS - 6

CIVIL MINUTES - GENERAL

Case No. CV 13-08475 MMM (PJWx)

Date December 30, 2013

Title *Mission Property Partners LLC v. Thelma D. Taylor et al.*

Present: The Honorable MARGARET M. MORROW

ANEL HUERTA

N/A

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None

None

**Proceedings:**            **Order Remanding Case to Los Angeles Superior Court for Lack of Subject Matter Jurisdiction**

**I. FACTUAL BACKGROUND**

Plaintiff Mission Property Partners LLC (“Mission”) filed this unlawful detainer action in Los Angeles Superior Court against Thelma Taylor and certain fictitious defendants on September 13, 2013.<sup>1</sup> Defendants are allegedly holdover occupants in possession of real property located in Carson, California (“the property”).<sup>2</sup> Plaintiff acquired ownership of and title to the property at a trustee sale, and it has allegedly perfected its title pursuant to California Civil Code §§ 2924 *et seq.*<sup>3</sup>

Plaintiff alleges that on September 6, 2013, it served a written three day notice to quit on defendants, which expired on September 9, 2013.<sup>4</sup> It asserts that defendants remained in possession of the property after the notice to quit expired, without its consent and despite its demands for

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<sup>1</sup>Notice of Removal, Docket No. 1 (Nov. 15, 2013), Complaint.

<sup>2</sup>*Id.*, ¶¶ 2, 3, 9.

<sup>3</sup>*Id.*, ¶¶ 5, 7.

<sup>4</sup>*Id.*, ¶ 8.

immediate possession.<sup>5</sup>

Plaintiff seeks possession of the property, damages of \$50.00 per day from September 9, 2013 until the date judgment is entered, and costs of suit.<sup>6</sup>

On November 15, 2013, Taylor removed the action to this court, invoking the court's jurisdiction under 28 U.S.C. §§ 1331 and 1332(a).<sup>7</sup> On December 9, 2013, plaintiff filed a motion to remand.<sup>8</sup>

## II. DISCUSSION

### A. Legal Standard Regarding Removal Jurisdiction

Federal courts have a duty to examine their subject matter jurisdiction whether or not the parties raise the issue. See *United Investors Life Ins. Co. v. Waddell & Reed, Inc.*, 360 F.3d 960, 966 (9th Cir. 2004) (“[A] district court’s duty to establish subject matter jurisdiction is not contingent upon the parties’ arguments,” citing *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934)); see also *Attorneys Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir. 1996) (lack of subject matter jurisdiction may be raised at any time by either party or by the court *sua sponte*); *Thiara v. Kiernan*, No. C06-03503 MJJ, 2006 WL 3065568, \*2 (N.D. Cal. Oct. 25, 2006) (“A district court has an independent obligation to examine whether removal jurisdiction exists before deciding any issue on the merits”).

Where a case has been removed, the court may remand for lack of subject matter jurisdiction at any time before final judgment. See 28 U.S.C. § 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded”). The court may – indeed must – remand an action *sua sponte* if it determines that it lacks subject matter jurisdiction. See *Kelton Arms Condominium Owners Ass’n v. Homestead Ins. Co.*, 346 F.3d 1190, 1192 (9th Cir. 2003) (“[W]e have held that the district court must remand if it lacks jurisdiction,” citing *Sparta Surgical Corp. v. Nat’l Ass’n Sec. Dealers, Inc.*, 159 F.3d 1209, 1211 (9th Cir. 1998)). For the reasons discussed below, the court lacks subject matter jurisdiction and the action must be

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<sup>5</sup>*Id.*, ¶ 9.

<sup>6</sup>*Id.* at 2-3 (prayer).

<sup>7</sup>*Id.*, ¶ 3; *id.* at 6 (prayer).

<sup>8</sup>Motion to Remand, Docket No. 5 (Dec. 9, 2013).

remanded to Los Angeles Superior Court.<sup>9</sup>

## **B. Federal Question Jurisdiction**

### **1. Legal Standard Governing Federal Question Jurisdiction**

Under 28 U.S.C. § 1331, district courts “have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” Federal question jurisdiction is presumed absent unless defendant, as the party seeking to invoke the court’s jurisdiction, shows that plaintiff has either alleged a federal cause of action, *American Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 260 (1916) (“a suit arises under the law that creates the action”), a state cause of action that turns on a substantial dispositive issue of federal law, *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 9 (1983); *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 199 (1921), or a state cause of action that Congress has transformed into an inherently federal cause of action by completely preempting the field of its subject matter, *Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557, 560 (1968); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 65 (1987).

Whether a claim “arises under” federal law must be determined by reference to the “well-pleaded complaint.” *Franchise Tax Bd.*, 463 U.S. at 9-10. Since a defendant may remove a case under 28 U.S.C. § 1441(b) only if the claim could have been brought in federal court, the existence of removal jurisdiction must also be determined by reference to the “well-pleaded complaint.” *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 808 (1986). The well-pleaded complaint rule makes plaintiff the “master of the claim” for purposes of removal jurisdiction. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Where a plaintiff could maintain claims under both federal and state law, therefore, plaintiff can prevent removal by ignoring the federal claim and alleging only state law causes of action. *Rains v. Criterion Systems, Inc.*, 80 F.3d 339, 344 (9th Cir. 1996).

For federal question jurisdiction to attach, “a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff’s cause of action.” *Gully v. First Nat’l Bank in Meridian*, 299 U.S. 109, 112 (1936). Only where the “right to relief under state law requires resolution of a substantial question of federal law in dispute between the parties” does a state law cause of action “arise under” the laws of the United States. *Franchise Tax Bd.*, 463 U.S. at 13 (1983). A claim does not present a “substantial question” of federal law merely because a federal question is an “ingredient” of the cause of action. Indeed, “the mere presence of a federal issue in a state cause of action does not automatically confer federal question jurisdiction.” *Merrell Dow Pharmaceuticals*, 478 U.S. at 813.

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<sup>9</sup>Because the court determines *sua sponte* that it must remand the action for lack of subject matter jurisdiction, it need not consider plaintiff’s motion to remand and denies the motion (Docket No. 5) as moot.

Likewise, it is not enough for removal purposes that a federal question may arise during the litigation in connection with a defense or counterclaim. “[F]ederal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar, Inc.*, 482 U.S. at 392. See also *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 152 (1908). “A defense is not part of a plaintiff’s properly pleaded statement of his or her claim.” *Rivet v. Regions Bank of La.*, 522 U.S. 470, 475 (1998). See also *Taylor*, 481 U.S. at 63; *Gully*, 299 U.S. at 112 (“To bring a case within the [federal question removal] statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff’s cause of action”). Thus, “a case may not be removed to federal court on the basis of a federal defense, . . . even if the defense is anticipated in the plaintiff’s complaint, and even if both parties admit that the defense is the only question truly at issue in the case.” *Franchise Tax Bd.*, 463 U.S. at 14.

## 2. Whether Federal Question Jurisdiction Exists

There is no federal question apparent on the face of plaintiff’s complaint, which alleges only an unlawful detainer cause of action. See *Wells Fargo Bank v. Lapeen*, No. C 11-01932 LB, 2011 WL 2194117, \*3 (N.D. Cal. June 6, 2011) (“an unlawful detainer action, on its face, does not arise under federal law but is purely a creature of California law,” citing *Wescom Credit Union v. Dudley*, No. CV 10-8203 GAF (SSx), 2010 WL 4916578, \*2 (C.D. Cal. Nov. 22, 2010)); *IndyMac Federal Bank, F.S.B. v. Ocampo*, No. EDCV 09-2337 PA (DTBx), 2010 WL 234828, \*2 (C.D. Cal. Jan. 13, 2010) (remanding an action to state court for lack of subject matter jurisdiction where plaintiff’s complaint contained only an unlawful detainer claim); *U.S. Bank N.A. v. Lopez*, NO. C09-05985 HRL, 2009 WL 5218006, \*1 (N.D. Cal. Dec. 31, 2009) (same); *Galileo Financial v. Miin Sun Park*, No. EDCV 09-1660 PSG, 2009 WL 3157411, \*1 (C.D. Cal. Sept. 24, 2009) (“Here, the complaint only asserts a claim for unlawful detainer, a cause of action that is purely a matter of state law. Thus, from the face of the complaint, it is clear that no basis for federal question jurisdiction exists”).

Taylor asserts the court has federal question jurisdiction because she has alleged a counterclaim for violation of the Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. § 2605. Defenses and counterclaims do not give rise to federal question jurisdiction if the complaint does not allege a federal question. “[F]ederal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar, Inc.*, 482 U.S. at 392; see also *Mottley*, 211 U.S. at 152. See *Redevelopment Agency of City of San Bernardino v. Alvarez*, 288 F.Supp.2d 1112, 1115 (C.D. Cal. 2003) (“For both removal and original jurisdiction, the federal question must be presented by the plaintiff’s complaint as it stands at the time of removal. Removal, therefore, cannot be based on a counterclaim or cross-claim raising a federal question,” citing *Metro Ford Truck Sales, Inc. v. Ford Motor Co.*, 145 F.3d 320, 327 (5th Cir. 1998)). Because plaintiff’s complaint does not present a federal question, either on its face or as artfully pled, the court lacks jurisdiction under 28 U.S.C. § 1331.

## C. Whether Diversity Jurisdiction Exists

### 1. Legal Standard Governing Diversity Jurisdiction

“The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different states.” 28 U.S.C. § 1332(a); see also *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (“[J]urisdiction founded on [diversity] requires that the parties be in complete diversity and the amount in controversy exceed \$75,000”). In any case where subject matter jurisdiction is premised on diversity, there must be complete diversity, i.e., all plaintiffs must have citizenship different than all defendants. See *Strawbridge v. Curtis*, 7 U.S. (3 Cranch) 267 (1806); see also *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 n. 3 (1996).

### 2. Whether Diversity Jurisdiction Exists

#### a. Amount in Controversy

The court first examines whether the amount in controversy exceeds \$75,000. “[W]hen a complaint filed in state court alleges on its face an amount in controversy sufficient to meet the federal jurisdictional threshold, [the amount in controversy] requirement is presumptively satisfied unless it appears to a ‘legal certainty’ that the plaintiff cannot actually recover that amount.” *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007). See also *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938) (stating that “the sum claimed by the plaintiff controls if the claim is apparently made in good faith,” and that “[i]t must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal”). Where, by contrast, “it is unclear or ambiguous from the face of a state-court complaint whether the requisite amount in controversy is pled[,] . . . [courts] apply a preponderance of the evidence standard.” *Guglielmino*, 506 F.3d at 699. Finally, “when a state-court complaint affirmatively alleges that the amount in controversy is less than the jurisdictional threshold, the ‘party seeking removal must prove with legal certainty that [the] jurisdictional amount is met.’” *Id.* (quoting *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994, 1000 (9th Cir. 2007)).

In its complaint, plaintiff expressly states that the amount demanded does not exceed \$10,000.<sup>10</sup> Taylor does not argue that the amount in controversy is higher than \$10,000. Consequently, she has failed to demonstrate to a legal certainty that the amount in controversy requirement is met. As a result, the court lacks diversity jurisdiction to hear the action.<sup>11</sup>

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<sup>10</sup>Complaint at 1.

<sup>11</sup>In addition to the fact that plaintiff specifically limited the damages sought, it is unlikely that daily holdover damages of \$50.00 would exceed the jurisdictional minimum. For that to occur, judgment would have to be entered on or after October 18, 2017. As unlawful detainer is a summary

### b. Complete Diversity

Taylor alleges that she is a California resident.<sup>12</sup> A party's residency, however, does not determine his or her citizenship for purposes of diversity jurisdiction. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (“[T]he diversity jurisdiction statute, 28 U.S.C. § 1332, speaks of citizenship, not of residency. To be a citizen of a state, a natural person must first be a citizen of the United States. The natural person's state citizenship is then determined by her state of domicile, not her state of residence. . . . A person residing in a given state is not necessarily domiciled there, and thus is not necessarily a citizen of that state”); see also *Weible v. United States*, 244 F.2d 158, 163 (9th Cir. 1957) (“Residence is physical, whereas domicile is generally a compound of physical presence plus an intention to make a certain definite place one's permanent abode, though, to be sure, domicile often hangs on the slender thread of intent alone, as for instance where one is a wanderer over the earth. Residence is not an immutable condition of domicile”). Taylor also alleges that Mission “is doing business in the State of California.”<sup>13</sup> Because Mission is a limited liability company, Taylor must allege the citizenship of each of its members or owners to show that diversity exists. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (“[A]n LLC is a citizen of every state of which its owners/members are citizens”). Taylor has not alleged the citizenship of Mission's members. Because Taylor has not adequately alleged her own citizenship or the citizenship of Mission's members, the court is unable to conclude that § 1332(a)'s complete diversity requirement has been met.

### III. CONCLUSION

“The ‘strong presumption’ against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). For the reasons stated, Taylor has failed to carry her burden of showing that the court has subject matter jurisdiction to hear this action. As a consequence, the clerk is directed to remand the case to Los Angeles Superior Court forthwith.

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proceeding, it is unlikely that judgment would be entered some four years after the action was filed.

<sup>12</sup>Notice of Removal, ¶ 1.

<sup>13</sup>*Id.*, ¶ 2.